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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

BLACK & VEATCH INTERNATIONAL COMPANY,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 00-2402-JAR
)	
FOSTER WHEELER ENERGY CORPORATION,)	
)	
Defendant.)	
)	

ORDER DENYING SUMMARY JUDGMENT

This action arises out of the construction of the Hanfeng Power Plant, Units 1 and 2 (Project) in the Peoples Republic of China. Plaintiff Black & Veatch International Company (Black & Veatch) contracted with Defendant Foster Wheeler Energy Corporation (Foster Wheeler) to design, supply and fabricate structural steel for the Project, in exchange for payment of \$20,990,657. This matter comes before the Court pursuant to Plaintiff's Motion for Partial Summary Judgment #4 - FWEC's Counterclaim for Late Bolt Deliveries (Doc. 310). Black & Veatch seeks summary judgment on Foster Wheeler's counterclaim for liquidated damages for late delivery of high strength bolts. Pursuant to Counterclaim "N," Foster Wheeler originally sought \$5,505,060 in liquidated damages for alleged late steel deliveries. In the Pretrial Order

(Doc. 272), Foster Wheeler reduced its claim to \$58,323.70, based only on the alleged late delivery of high strength bolts. In its response to the current motion, Foster Wheeler sought to voluntarily withdraw, without prejudice, its Counterclaim “N.” In its response, Foster Wheeler notes that this is a pass-through claim and states that:

During the course of this lawsuit, Foster Wheeler has been actively engaged in negotiations with the Owner in an effort to close out the Project so that Foster Wheeler could receive its final payment. As of this time Foster Wheeler has not received final payment by the Owner, but has obtained a tentative agreement with the Owner for settlement of the Owner’s claims for liquidated damages due to late steel delivery. Foster Wheeler now believes that it will probably be able to persuade the Owner to withdraw its Late Steel Delivery Claim

It appears as though Foster Wheeler may have subsequently reached an agreement with the Owner and possibly received its final payment under the Project. On March 20, 2003, subsequent to Foster Wheeler’s response to the current motion, the parties filed a joint Stipulation of Dismissal With Prejudice of Counterclaim “N” of Foster Wheeler (Doc. 363). The parties did not notify the Court that the pending motion for summary judgment was moot nor did Black & Veatch withdraw its motion. Therefore, the Court is requesting that the parties file a letter indicating whether the status of any other pending motions has been affected by matters occurring subsequent to their initial briefing. For example, the Pretrial Order (Doc. 272) also provides that Foster Wheeler’s Counterclaim “M” (\$340,000) is subject to adjustment at the time of final Project Close-Out with the Owner.

IT IS THEREFORE ORDERED BY THE COURT that Plaintiff’s Motion for Partial Summary Judgment #4 - FWEC’s Counterclaim for Late Bolt Deliveries (Doc. 310) is MOOT and shall be DENIED.

IT IS FURTHER ORDERED BY THE COURT that the parties shall submit a letter,

updating the Court on the status of the parties' pending motions and the status of any settlements on issues or claims, within 10 days of the date of this Order.

IT IS SO ORDERED.

Dated this 19th day of June, 2003.

S/ Julie A. Robinson
JULIE A. ROBINSON
UNITED STATES DISTRICT JUDGE